IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 823 OF 2005

IN

CIVIL APPLICATION NO. 2329 OF 2004

IN

WRIT PETITION NO. 633 OF 2003

RAMCHANDRA ANANT DALAL .. PETITIONER

Vs.

MARTAND GAJANAN JOSHI .. RESPONDENT

Mr. A. A. Garge for petitioner

Mr. S. V. Palsule-desai for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-13-4-2005

**P.C.**

The petitioner is original defendant in R.C.S. No. 550/87. This suit was filed in the court of Civil Judge, Junior Divison, Kalyan by the

landlord for possession of the suit premises on the ground of non-payment of arrears of rent and permanent construction on the suit premises without consent of the landlord. The suit was decreed on 3/5/97 on the ground that the tenant had carried out permanent construction without obtaining written permission of the landlord.

2. It is pertinent to note that in the written statement filed in that suit the plaintiff nowhere stated thate the suit premises belonged to the Kalyan-Dombivili Municipal Corporation. The petitioner thereafter filed an appeal. In the appeal memo also it was not stated that the suit premises belonged to the Corporation. On 5/12/04 the appeal was dismissed. Thereafter the petitioner filed a writ petition in this court. In that writ petition also the petitioner did not state that the suit premises belong to the Corporation. That writ petition came to be dismissed on 18/6/04. The petitioner filed S L P in the Supreme Court. The said S L P was dismissed on 3/9/04. While dismissing the S L P the Supreme Court observed that "The special leave petition is dismissed without prejudice to the petitioner's remedy, if any, to seek reasonable time for vacating the premises".

3. Accordingly the petitioner filed Civil Application No. 2329 of 2004 praying that time to vacate the premises may be extended. The petitioner was granted time upto 6/12/04. Thereafter the present civil application is

filed in which it is stated that the suit premises belong to Kalyan Dombivili Municipal Corporation and hence the petitioner cannot handover possession of the suit premises.

4. I asked the learned counsel for the petitioner as to why neither in the written statement nor in the suit, nor in the appeal memo and the writ petition filed in this court, it was stated that the suit premises belonge to the Corporation. He stated that the defendant got to know about it very recently. This court asked him to produce any letter from the Corporation stating this fact. He submitted that he has not received any such letter but a map is given to him which shows that the suit premises belong to the Corporation. It is not possible to accept such submission at such belated stage. If the suit premises belong to the Corporation this fact ought to have been brought to the notice of the trial court or lower appellate court or this court. It is not possible to accept the submission that the petitioner got to know about this fact very recently. Morever the Corporation has not addressed any letter to the petitioner. To me this appears to be an attempt to frustrate the decree of the trial court, which was confirmed upto Supreme Court.

5. At this stage the learned counsel for the petitioner requests that this order may be stayed. Request is rejected.

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